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December 5, 2006

VIA U.S. MAIL

Fair Political Practices Commission
428 J. Street, Suite 620
Sacramento, CA 95814

Re. Request for Rulemaking to Amend Regulation Section 18531.7

Dear Chairperson Randolph and Honorable Members of the Commission

Our firm represents the California Catholic Conference, an organization which represents the interests of California's Roman Catholic Bishops and their two archdioceses and ten dioceses within this state. The Conference requests the institution of rulemaking proceedings regarding the impact of the Political Reform Act (PRA) upon the ability of churches and faith-based organizations in this state to engage in constitutionally-protected communications with the faithful in their particular denomination or group. The goal of such a change would be to clarify that such communications are not "contributions" or "expenditures" under the PRA. Because of the importance of this issue, this request for rulemaking will be joined by a number of other churches and faith-based organizations in California.

Specifically, the Conference proposes an amendment to section 18531.7 of title 2, division 6 of the California Code of Regulations (Section 18531.7), as it relates to "member communications." Four years ago, at the time of the original adoption of Section 18531.7, the Chairperson and various members of the Commission expressed the concern that the language of this section could result in many non-profit and charitable organizations being deemed to fall outside its scope; the Chairperson suggested that members of the public contact the Commission if the scope of the regulation were to, at some point, be found to fall short of reaching all the organizations intended under the statute to be covered. Unfortunately, the fears of the Chairperson and other members of the Commission have been realized, and the Conference respectfully requests the institution of rulemaking proceedings to amend the regulation to clarify its reach.

DISCUSSION

The proposed amendment to Section 18531.7 relates to the ability of nonprofit religious organizations to communicate with their members on matters otherwise regulated by the PRA. The proposed change is intended to further the intent of Government Code section 85312 (Section 85312) and to permit duly-constituted

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organizations with a discrete membership to conduct internal communications with their members without the payments for such communications constituting “contributions” or “expenditures” under the PRA.

Payments for communications supporting or opposing a candidate or ballot measure are typically reportable as “contributions” or “expenditures.” Once an organization raises or expends \$1,000 or more in support of or opposition to a candidate or ballot measure, the organization becomes a “committee” and is subject to the various regulations and reporting requirements under the PRA. Although Section 85312 was originally enacted by the voters in Proposition 34, it was later amended by the Legislature to provide an exception to this general rule for “member communications.” Section 85312, therefore, currently provides that payments by certain organizations for communications to their members are excluded from what may be considered a “contribution” or “expenditure” and thereby prevents these organizations from qualifying as a “committee” and becoming subject to the PRA’s various requirements.

Section 85312 provides in pertinent part:

For purposes of this title, payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements.

Because such internal communications do not share the attributes of political expenditures or contributions, this section provides room for organizations to communicate with their members – not to the general public – so that the associational and free speech rights safeguarded by the First Amendment are not diminished and internal affairs of organizations are not impeded by governmental regulatory intrusion.

Section 18531.7 was intended to implement Section 85312 and protect these rights while precluding business and commercial relationships from the protections of this exemption. This regulation defines what constitutes an “organization” and who may be considered a “member” within the meaning of Section 85312. Unfortunately, the restrictive definition under Section 18531.7 of who may be considered a “member” precludes nonprofit and religious or charitable institutions from communicating with members on the same terms as other organizations:

“Member” means any person who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers or on a

disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution. "Member" also means any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501, subdivision (c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

As was discussed at the Commission's August 9, 2002 public hearings on Section 18531.7, there was a concern that an overbroad definition of "member" could permit the inclusion of economic or business relationships, such as a video rental store or grocery club membership, and would thereby undermine the purposes of the PRA by permitting retailers to send political materials to customers. On the other hand, the Chairperson and various members of the Commission also expressed the concern that the regulation may be underinclusive and might be interpreted to exclude many nonprofit and charitable organizations that section 85312 was intended to reach.

The Commission's Greene Advice Letter No. A-06-155 demonstrates that the concern over exclusion of nonprofit and charitable organizations was well founded. According to the interpretation of Section 18531.7 set forth in the Greene Advice Letter, the structure of religious or Church institutions — which are organized under California law as a Corporation Sole — precludes "parishioners" or congregants from being considered "members" for purposes of Section 85312. In particular, the Advice Letter states a position that the definition under Section 18531.7, which limits "members" to those who under the organization's bylaws may vote on directors and officers, mergers and dissolution, changes to the articles or bylaws, or pays predetermined dues, has the effect of drawing a line that bars parishioners or congregants of churches from qualification as a "member" under the PRA.

As a specific example, a Roman Catholic diocese organized as a corporation sole under section 10000 et seq. of the Corporations Code has no bylaws, no elections, and the members of the church do not vote on the disposition of assets held by the Church. Moreover, church members do not pay predetermined "membership dues," but do voluntarily provide financial support according to faith and ability through weekly donations offered at church services. Other church members, unable to offer monetary contributions, provide volunteer support and regularly participate in worship and charitable, or other church-related, activities. Although church members are not declared "members" in church bylaws or required to pay predetermined dues, the relationship between parishioners and the church is no less significant than those who may be

considered a “member” by means of their payment of dues to a secular organization under Section 18531.7. Indeed, the relationship between a parishioner and his or her church will likely be far more significant and enduring than in the case of secular organizations, and entails a significant contribution of time, effort, and personal commitment to the church over time, attributes that cannot be measured in monetary terms. This contribution of time and effort may be especially important in the case of individuals who do not have the resources to provide monetary support and thus would be unable to do so even if required in bylaws, but endeavor to volunteer in support of Church activities.

For purposes of communications with members, Catholic churches define “membership” more narrowly than who may be considered Catholic in terms of religious doctrine or based upon a declaration of faith. Rather, for purposes of communications with members, membership in the Catholic Church is evinced by registration as a parishioner of a parish within a larger geographic area called a diocese and, under some circumstances, membership may also be shown by affiliation with the Roman Catholic Church through the enrollment of children in Catholic educational institutions, or through employment by entities such as Catholic Social Services or Catholic educational institutions. In contrast, individuals who are the beneficiaries of Catholic charitable efforts, such as those who receive food, housing, disaster relief, or family services provided by Catholic Charities agencies are not considered members of the Church solely by virtue of being beneficiaries of such efforts (although they may, of course, otherwise be members by way of registration at a parish or similar affiliation with the Church). Thus, membership in the Church entails a substantial relationship to the organization, is shown by voluntary affiliation with the Church and registration as a parishioner, and does not include persons who simply appear on a mailing or contact list or avail themselves of charitable activities.

PROPOSED REGULATORY AMENDMENT

Based on the foregoing facts and analysis, the Conference offers the following suggestion concerning the amendment of Section 18531.7, to clarify the definition of “member” under subdivision (a)(2):

“Member” also means any person who is a congregant or parishioner of a church organized as a nonprofit religious corporation under Corporations Code section 9110 et seq. or a corporation sole organized under Corporations Code 10000 et seq. Members of a local nonprofit religious corporation are considered to be members of any national or international religious institution with which the local church is affiliated.

Importantly, this narrowly-crafted provision for communications between religious organizations and their members addresses the Commission's prior concern that, as drafted, Section 18531.7 may not reach those organizations it was intended to reach, without upsetting the settled understanding of the remainder of this regulation. We have been assured, therefore, that once the rulemaking process is initiated, churches of differing faiths will join us in advocating for this modification of the regulations.

Thank you for your consideration of our request for institution of a rulemaking proceeding to amend Section 18531.7. Please do not hesitate to contact us if we can answer any questions or be of assistance. We look forward to working with you to help ensure that Section 85312 reaches all organizations it was intended to exempt.

Very truly yours,

SWEENEY & GREENE LLP



Stephen R. McCutcheon, Jr.

cc: Edward Dolejsi, Executive Director,
California Catholic Conference